

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
THE UNIVERSAL CHURCH, INC.)
)
Petition for Exemption from Closed)
Captioning Requirements)

FILED/ACCEPTED

DEC 31 2009

Federal Communications Commission
Office of the Secretary

To: Chief, Consumer and Governmental Affairs Bureau

PETITION FOR EXEMPTION OR WAIVER

The Universal Church, Inc. ("Petitioner" or the "Church"), by its attorneys and pursuant to Section 79.1(f) of the Commission's Rules, hereby submits this Petition for an exemption from the closed captioning requirements; in the alternative, the Church requests a temporary waiver of the Rules for additional time within which to come into compliance. Specifically, the Commission's Rules require video programming distributors to ensure that 100% of new, non-exempt Spanish language programming carried by them be closed captioned on or after January 1, 2010. The Church produces certain Spanish language programming and leases time from video programming distributors in order to air that programming; absent an exemption, those providers will be unable to continue to carry the Church's programming. In support hereof, the following is respectfully shown:

I. Background.

The Universal Church is an international Pentecostal Protestant church; in the U.S., it is organized as a New York not-for-profit corporation.¹ The Universal Church is a worldwide ministry and is dedicated to preaching the Gospel and teaching the Christian doctrine according to the Bible as the revealed Word of God, with a strong focus on prayer. The Church's mission includes ministry to the sick, the oppressed, the poor and the needy. The Universal Church keeps its churches open and pastors are available seven days a week. The Church has been providing services and outreach in the United States for more than 20 years.

As part of its ministry, the Church produces a number of Spanish language programs for television distribution. The programs include videotaped sermons, Bible lessons and call-in advice programs. Programs generally include prayer and an invitation to the Church. Generally, these programs are broadcast only once.

Video programming distributors do not purchase the Church's programming. Rather, the Church leases time on broadcast stations in various locations throughout the United States to air its programs. The Church does not receive advertising revenue, sponsorships, or compensation of any kind for its programming.

The Church only recently became aware of the deadline for closed captioning of Spanish language programming.² Programming production is not the Church's principal

¹ Pursuant to Sections 79.1(f)(9) and 1.16, a facsimile copy of the Declaration of Regina da Silva, attesting to the truth of the factual statements herein, is attached to this Petition. The original Declaration will be submitted to the Commission as a supplement.

² Because the closed captioning requirements become applicable to new Spanish-language programming on January 1, 2010, this Petition is being filed in advance of that imminent deadline. The Church may supplement the Petition with supporting documentation and additional information as soon as possible.

activity; indeed, such programming is purely ancillary to the Church's religious mission. The Church does not retain counsel to keep it apprised of FCC regulatory matters and Rules. As promptly as possible after learning of impending closed captioning deadline, the Church investigated its options for the immediate acquisition of closed captioning equipment; however, there was insufficient time before the January 1, 2010 deadline to obtain the necessary equipment in a reasonable and cost-effective manner.

The Church notes that the Commission has previously granted temporary extensions to permit petitioners to come into compliance with other aspects of the closed captioning requirements. *See e.g., WDLP Broadcasting Co., LLC*, DA 05-2257 (Policy Div., rel. Aug. 9, 2005) (three years); *The Wild Outdoors*, 16 FCC Rcd. 13611 (Cable Bur. 2001) (one year). The Church believes that a similar extension, of no more than one (1) year, would provide it with sufficient time to comply with the closed captioning requirements, and therefore requests a temporary extension, or in the alternative, a temporary waiver to allow additional time to come into compliance with the closed captioning requirements for Spanish language programming.

II. Certain Programming Qualifies for Exemption Pursuant to 47 C.F.R. § 79.1(d)(5).

Section 79.1(d)(5) of the Commission's Rules exempts from the closed captioning requirements "[p]rogramming that is being distributed to residential households between 2 a.m. and 6 a.m. local time." Two of the Church's programs are distributed only in California, and between 2 a.m. and 6 a.m. local time; specifically: *Pare de Sufrir* is aired from 2:00 – 2:30 a.m. Pacific Time on Univision and 5:00 – 5:30 a.m. Pacific Time on Telefutura; and *Camino de Luz* is broadcast from 2:00 – 2:30 a.m. Pacific Time on Azteca 54.

III. Immediate Compliance with the Rules would be an Undue Burden.

Section 79.1(f) of the Commission's Rules allows the Commission to grant an exemption from the closed captioning requirements, upon petition, to "a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider" if compliance would impose an "undue burden" on the petitioner. *See* 47 C.F.R. § 79.1(f)(1). In determining whether compliance would impose an undue burden, the Commission considers four factors:

- "(i) The nature and cost of the closed captions for the programming;
- (ii) The impact on the operation of the provider or program owner;
- (iii) The financial resources of the provider or program owner; and
- (iv) The type of operations of the provider or program owner."

See 47 C.F.R. § 79.1(f)(2). The Church respectfully submits that the balance of the factors supports a grant of the requested extension.

While the Church believes that it will in the future be able to cost-effectively caption its programming, it has been unable to do so by the January 10, 2010 deadline. Regardless of the costs of closed captioning, it should be noted that the Church does not receive *any* compensation of any kind for its programming. For the Church, the subject programming represents an expenditure, not a revenue source. Hence, the burdens and costs associated with closed captioning the programming outweigh the economic benefit the Church receives from that programming.

Although the Church is a programming owner under the Rules, it submits that its situation is analogous to that of a video programming provider under Section 79.1(d)(11) and/or (12) of the Commission's Rules. Those provisions exempt a video programming provider from compliance with the closed captioning rules for any channel where the

“expenditure [to comply] would exceed 2% of the gross revenues received from that channel during the previous calendar year” or where the particular “channel of video programming producing annual gross revenues of less than \$3,000,000 during the previous calendar year.” *See* 47 C.F.R. §§ 79.1(d)(11) and (12), respectively. There are *no* gross revenues derived from all of the Church’s programming combined, let alone revenues approaching the three million dollar threshold of Section 79.1(d)(12). And any cost associated with closed captioning its programming will exceed 2% of the zero gross revenues the Church derives from that programming.

The impact on the Church also weighs in favor of an exemption. The production of video programming is not the Church’s primary activity, nor is it a major component of the Church’s religious mission. The Church is a not-for-profit organization; the majority of the funds it earns throughout the year are used to support its ministry. The Church is dedicated to the service of the sick, the poor and all persons in need, and must remain available 24/7 if it is to fulfill its mission. The Church believes that television is a valuable medium for spreading its religious message. Television permits the Church to provide counsel and solace to people who might otherwise never be exposed to its ministers’ teachings or have opportunity seek their advice. Nonetheless, the creation of religious television programming is merely one mechanism by which the Church carries out its ministry. The Church’s ministry within the communities it serves is more critical to the Church’s mission. The Church operates in numerous inner-city communities, and many of those it serves are poor; given a choice between foregoing or limiting the Church’s charitable and pastoral services to the needy and eliminating or reducing television programming, the Church would have to choose the latter.

The Commission has previously granted exemptions to non-profit organizations that did not receive compensation for their programming. *See Anglers for Christ Ministries, Inc.*, 21 FCC Rcd. 10094 (Consumer and Gov. Affairs Bur. 2006). As with the petitioners in that case, the Church is seeking an exemption for programming that “is ‘not remunerative in itself,’ insofar as [the Church is] . . . paying for its exhibition.” *Id.* at ¶ 10.

Here, too, the programming at issue “share[s] characteristics” with programming that has been identified as exempt. *Id.* In particular, the Church’s programming, like the programming in *Anglers*, is analogous to locally-produced programming exempt pursuant to Section 79.1(d)(8). *Id.* at ¶ 8. Although the Church’s programming is aired by television stations outside of the local community in which it is produced, and interest in the programming is not strictly limited to “truly local” interest in a particular locale,³ the Church’s programming has no repeat value; nearly all of the programs are shown only once. Indeed, the programming is of little or no economic value even when first run: no video programming distributor purchases the Church’s programming; it is the Church that pays broadcasters to carry these programs. The Church’s programming also has limited appeal to a narrow audience.⁴

IV. In the Alternative, a Waiver of the Closed Captioning Rules is Appropriate.

If the Commission declines to grant the Church an exemption pursuant to Section 79.1(f), the Church submits that the grant of a waiver will serve the public interest, and is warranted. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (citations

³ *Cf.*, *Prophetic Miracle Ministries*, 20 FCC Rcd. 5904, ¶ 3 (Policy Div. 2005).

⁴ *Cf.*, *Closed Captioning and Video Description of Video Programming, Report and Order*, 13 FCC Rcd. 32372, ¶ 158 (1997).

omitted) (“a general rule, deemed valid because its overall objectives are in the public interest, may not be in the ‘public interest’ if extended to an applicant [whose proposal] will not undermine the policy, served by the rule, that has been adjudged in the public interest”).

The Commission is certainly empowered to grant waivers of any of its Rules. “The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances,” *Id.* (citations omitted). Such “special circumstances” are present in this case. The Church is not a media entity familiar with that industry’s regulatory structure, but a non-profit, religious organization, that learned of the closed captioning deadline shortly before Christmas and took prompt action to avoid a violation of the Commission’s Rules. Absent temporary relief from the closed captioning requirements, the broadcasters who air the Church’s programming will have little choice but to discontinue carrying that programming. That programming is not for-profit fare of interest to a mass audience, but rather involves religious education and outreach, targeted toward those seeking spiritual guidance. The Church respectfully submits that the loss of such programming, even temporarily, would do a far greater disservice to interested members of the public than would maintaining the *status quo*, and permitting the Church’s programs to continue to be broadcast uncaptioned for a temporary period.

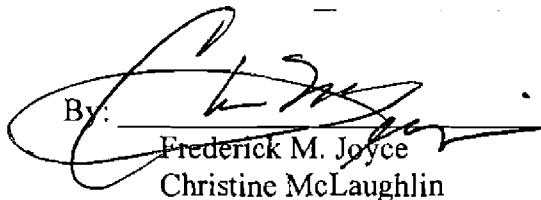
Conclusion

For all the foregoing reasons, the Church respectfully submits that *Pare de Sufrir* and *Camino de Luz* are exempt from the Commission’s closed captioning rules pursuant

to Section 79.1(b)(5), and the remainder of its programs qualify for a temporary exemption pursuant to Section 79.1(f), because immediate compliance with the closed captioning rules would impose an undue burden on the Church with respect to this non-remunerative programming. In the alternative, the Church respectfully submits that a temporary waiver of the requirement to closed caption Spanish language programming. The Church therefore respectfully submits that the relief requested this Petition would serve the public interest, and this Petition should be granted.

Respectfully submitted,

THE UNIVERSAL CHURCH, INC.

By: 
Frederick M. Joyce
Christine McLaughlin

Its Attorneys

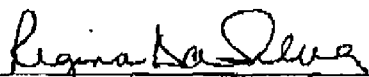
VENABLE LLP
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Date: December 31, 2009

DECLARATION OF REGINA DA SILVA

I, Regina da Silva, do hereby declare under penalty of perjury as follows:

1. I am a U.S. citizen, over the age of 18 years and competent to be a witness.
2. I am the Chancellor of The Universal Church, Inc. (the "Church"), and have personal knowledge of the Church's operations; in particular, its television production activities.
3. I have reviewed the foregoing Petition for Exemption or Waiver, and except for matters of which the Commission may take official notice, all statements of fact contained therein are true and correct to the best of my knowledge, information and belief.
4. I declare under penalty of perjury that the foregoing is true and correct.


Regina da Silva

Executed on December 31, 2009